THE HON'BLE SRI JUSTICE K.C. BHANU

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W.P.NO.27376 of 2003 AND BATCH

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DATE: 19-08-2005

Between:

I.Sri Hari, S/o I.Govindha swamy
Conductor, E.79617, Chittoor-II Depot, R/o D.No.3/242, Brahmin Street, Greenespet, Chittoor and others

..... PETITIONERS

AND

1 The Chairman-cum-Presiding Officer,
Industrial Tribunal- cum-Labour Court, Anantapur and others

RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.Nos.27376 OF 2003, 8277, 5089,
8308, 8315, 8288 AND 7769 OF 2004

COMMON ORDER:

Since the issue involved in all these writ petitions is one and the same, they are being disposed by a common order.

W.P.Nos.27376 of 2003 and 8277 of 2004 are filed challenging the common award dated 18-06-2003 passed in I.D.Nos.36, 44, 45, 46, 47, 49, 66, 67, 68 of 2002, and 322 and 323 of 2001; W.P.Nos.5089 and 8308 of 2004 are filed challenging the common award dated 13-06-2003 passed in I.D.Nos.38, 39, 43, 48 and 121 of 2002; W.P.No.8315 of 2004 is filed challenging the common award dated 12-06-2003 passed in I.D.Nos.11, 12, 35, 69 and 127 of 2002; W.P.No.8288 of 2004 is filed challenging the common award dated 18-06-2003 passed in I.D.Nos.50, 79 and 107 of 2002 and W.P.No.7769 of 2004 is filed challenging the common award dated 11-06-2003 passed in I.D.Nos.78, 10, 64, 65 and 122 of 2002 by the Industrial Tribunal-cum-Labour Court, Anantapur. (for short 'Tribunal')

The brief facts that are necessary for the disposal of the present writ petitions may be stated as follows:

All the petitioners herein, prior to removal, were working as Conductors in the respondents-A.P.State Road Transport Corporation (for short 'Corporation'). On the allegation that

the petitioners submitted fake police warrants and thereby caused loss of revenue to

the Corporation, a preliminary

enquiry was conducted. Basing on the preliminary enquiry report, the petitioners were placed under suspension. A regular departmental enquiry was ordered against them. Thereafter, charges were framed, for which all the petitioners, except two, gave their explanation. As the explanation was not satisfactory, an enquiry officer was appointed to conduct a regular departmental enquiry. The enquiry officer, after considering the oral and documentary evidence on record, submitted his report holding that the charges levelled against the petitioners are proved. Thereupon, accepting the enquiry officer's report, the disciplinary authority issued a show cause notice of removal to the petitioners and sought the explanation for the same within 15 days, for which the petitioners submitted their explanation. As the explanation was not satisfactory, the disciplinary authority ordered for removal of the petitioners from service. The appeal and the review filed by the petitioners were dismissed. Thereupon, the petitioners raised the Industrial Disputes under Section 2-A (2) of the Industrial Disputes

Act, 1947 before the Tribunal. The Tribunal, by the aforesaid common awards, came to the conclusion that there were no merits in the petitions and accordingly all the claim petitions were dismissed. Challenging the same, the present writ petitions have been filed.

Learned counsel appearing for the petitioners contended that the evidence adduced before the enquiry officer to substantiate the charges levelled against the petitioners was

not sufficient to hold them guilty; that the evidence of the enquiry officer is not based upon any evidence; that it is for the respondent Corporation to establish that the charges

levelled against the petitioners are beyond preponderance

of probabilities; that there is no evidence to show that

the petitioners utilized the fake warrants and thereby misappropriated the amounts; that there was no possibility for the Conductors to know about the genuineness or otherwise of the police warrants; that the case of the petitioners has been discriminated in view of the fact that in respect of another employee, less punishment was imposed and that as per the orders of the Tribunal in I.D.No.184 of 2000, the petitioners therein were ordered to be reinstated, who were also similarly situated with that of the petitioners herein, and hence, he prays to allow the writ petition. He further contended that the letter issued by the Director General of Police is not proved and if that letter is eschewed from the consideration, there is no other evidence to show that the warrants produced by the petitioners were fake. He also placed strong reliance on one decision, which will be referred to at appropriate time.

On the other hand, the learned Standing counsel appearing for the respondents 2 to 5 vehemently contended that after conducting departmental enquiry by following the procedure, the enquiry officer gave a categorical finding that the charges levelled against the petitioners are established; that the findings of the enquiry officer cannot be said to be perverse and the same are based upon some evidence available; that considering the evidence on record, the Tribunal gave a categorical finding and the findings of the Tribunal cannot be said to be perverse and that the letter issued by the Director General of Police is not objected to, therefore, there is no need to examine any person connected with that document, and hence, there are no grounds to interfere with the impugned awards.

The law is well settled that every proceedings and decisions taken in administrative matter, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. In the decision making process, if the Court or the Tribunal or the Authority deciding the case has ignored vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant Act or misconstrued the scope of its jurisdiction, the

constitutional power under Article 226 can be exercised to set aside such erroneous findings so as to prevent gross injustice. While examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of a given case as otherwise the decision cannot be tested on the grounds of illegality, irrationality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of the facts by the decision maker.

The charges levelled against the writ petitioners are that they have produced fake police warrants, as detailed in the statement of allegation, by accounting in the waybills submitted by them along with bus cash after spell of their duties on the route mentioned in the charges and misappropriated the bus cash to a certain extent.

It is not disputed before this Court that all the petitioners produced the warrants before the concerned authority. Those warrants were referred to the Director General of Police by its letter dated 25-05-1999 stating that some of the warrants were found to be fake. The said warrants, for consolidation, remained with the concerned officers of the Corporation for a considerable length of period and even those officers did not suspect that the warrants are fake warrants. According to the Corporation, after consolidating the warrants, they were sent to the Director General of Police seeking clarification. The Director General of Police, CID A.P., Hyderabad, by its letter dated 23-06-1999 stated that certain police warrants were fake.

The contention of the learned counsel for the petitioners is that none of the officers concerned with those proceedings IS examined and if the letter of the Director General of Police is not taken into consideration, then there is absolutely no evidence to show that the warrants produced by the writ petitioners are fake. On this aspect, the Tribunal gave a categorical finding that the said letter can be admitted

into evidence in departmental proceedings without examining the author of the letter.

Strict rules of evidence are not applicable. Departmental authorities are not like Civil Courts and only documentary evidence can be the basis for the findings. Although the Evidence Act is not applicable to the disciplinary proceedings, still the misconduct of the delinquent officer must be established by some cogent evidence, on which objectively a finding can be given about the commission of offence or misconduct. There cannot be any dispute that conjectures or surmises cannot substitute the requirement of proof.

In the Tribunal, it is the contention of the petitioners that no one has disputed about the letter of the Director General of Police and no Conductor took an objection before the enquiry officer for relying on this letter. Once a document has been duly admitted in the departmental proceedings, the same can be relied upon, therefore, the said contention cannot be accepted. When the petitioners have not challenged the letter sent by the Director General of Police, in the enquiry, now they cannot turn round and say that the said document is not admissible in evidence. Had the petitioners disputed about the letter sent by the Director General of Police in the enquiry itself, then the question of proving that letter by examining the author would arise. Therefore, the contention raised by the learned counsel for the petitioners on this aspect is wholly untenable and devoid of merit.

It is further contended that there is no scope or possibility for the petitioners to know the genuineness or otherwise of the warrants and perhaps that is the reason why the concerned authorities could not detect that the warrants issued by the police department were fake. It is a case of negligence or dereliction of duty by the Conductors in not checking the warrants properly at the time when they were produced before them.

The specific case of the respondent Corporation is that the petitioners themselves have produced those fake warrants.

On this aspect, the Tribunal gave a finding that it is not possible for any private individual to prepare fake warrants and travel in the name of the police personnel. It appears to be most improbable because it would be very difficult for those private persons to wear the police dress and exhibit the badges bearing name and the numbers of police personnel while traveling in the buses.

By exercising such a difficult course, they will not achieve anything except undertaking the journey. If at all the police personnel travel by the bus, there is no need for them to produce the fake warrants. So, in those circumstances, the Tribunal came to the conclusion that in all probability, the petitioners have produced those fake warrants.

It is not the case of the petitioners that without giving a reasonable opportunity to them, the enquiry was conducted

and that the principles of natural justice have been followed.

A categorical finding was given by the Tribunal that the petitioner had been given an opportunity to cross-examine the witnesses and after the statements of witnesses were recorded, it was signed by the witnesses, enquiry officer and also by the petitioners, and that it was also mentioned beneath the statement of the witnesses that the enquiry was held satisfactorily. Therefore, the finding of the Tribunal that the enquiry was held properly cannot be disturbed.

There cannot be any dispute that the findings of the enquiry officer dealing with the disciplinary proceedings can be interfered with when the findings are not based upon any evidence and that no prudent person could have arrived at such findings on the basis of the material before the enquiry officer. It is also equally well settled that this Court while reviewing the disciplinary proceedings would not go into the sufficiency or insufficiency of the evidence.

Now, it has to be seen whether the findings of the enquiry officer are based upon the evidence or not. The Chief Inspectors, who conducted preliminary enquiries, were examined as witnesses besides the Senior Assistant. Their evidence would clearly go to show that during verification of police warrants and raising the bills for the months of September, October, November, 1998, it was observed that certain conductors of Tirupati Region submitted police warrants for huge amounts, while remitting the bus cash after spell of their duties. Later, the police warrants were found to be fake. So, upon appreciation of the evidence before the enquiry officer, the Tribunal came to the conclusion that the findings of the enquiry officer are based upon the evidence.

The learned counsel for the petitioners placed strong reliance on the decision reported in **THANTHAI PERIYAR TRANSPORT CORPN. LTD. v. HARIKRISHNAN** , wherein it was held:

> "In our view, the labour Courts, on considering the materials available on record, taking into consideration the fact that no Police Officials was examined, to ascertain whether they had traveled actually or not, and the fact that the mistakes committed by the Conductors, which were due to carelessness, would not amount to be serious in nature, calling for their removal from service ……"

The Division Bench in the above case also held at para-12 of the Judgment with regard to the discretionary powers under Article 226 of the Constitution of India, which reads as follows:

> "We have heard the learned counsel on both sides and perused the materials on record. No doubt this Court, in appropriate case, can quash the Award passed by labour Court. But at the same time, the Jurisdiction of this Court, while exercising the discretionary power under Art.226 of the Constitution of India is very limited. The Court can quash the Award, inter alia provided when the Labour Court has committed an error apparent on the face of records or when the findings so arrived are perverse otherwise not. This Court cannot reconsider or re-appreciate the evidence, on the basis of available records on record. It is also settled that perversity can only be seen if any reasonable person or authority properly

> instructed in the law, could have arrived at such a finding. It is also well settled that this Court while exercising the discretionary jurisdiction under Art. 226 of the Constitution of India, cannot take a different conclusion even if on same set of facts a contrary finding is possible to be arrived as this Court is not a Court of appeal."

A perusal of the above decision indicates that the above case is not a case of producing fake warrants. The charge levelled against the respondent therein is that they have not acted with care and diligence while performing their duties and that because of their dereliction of duties and act of misappropriation of amount, the Corporation sustained heavy loss. There was a case of misuse of police warrants because of negligence of the respondents therein. Therefore, the decision, relied upon by the learned counsel for the petitioners, has no relevance at all to the present facts of the case.

In the evidence adduced by the department, two possibilities could have taken place. Since the warrants produced by the petitioners are found to be fake, one possibility is that the fake warrants could have been produced by the petitioners for wrongful gain and another possibility is that they must have been produced by some other passengers other than the police. The chance of passengers producing those fake warrants is remote and perhaps that is the reason why the Tribunal also gave a finding that in all probabilities, those warrants have been prepared by the petitioners so as to cause wrongful loss to the Corporation. In all, the warrants and ticket numbers have been mentioned. Those tickets could as well issued to the passengers. In such an event, there is no need for the Conductors to account for the same. The Tribunal has given a finding that the fake warrants were produced by the petitioners with cogent reasons.

It is well settled that this Court while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India cannot take a different finding, even if on same set of facts a contrary finding is possible to be arrived at, as this Court is not a

Court of appeal.

The other contention raised by the learned counsel for the petitioners is that in similar circumstances the Tribunal has taken a different view in I.D.No.184 of 2000 because each Industrial Dispute has to be decided on the evidence available on record. The evidence produced in I.D.No.184 of 2004 was not made available before the Tribunal, which passed the impugned awards, and therefore, the Tribunal rightly not placed the reliance on the award passed in I.D.No.184 of 2004.

It is further contended that in the case of one D.Govardhan, the enquiry officer has given a different finding on the same set of facts. It is not in dispute that the said Goverdhan was imposed a punishment of reduction of basic pay by two incremental stages with cumulative effect. The evidence adduced relating to the departmental enquiry against the said Goverdhan was not placed before the Tribunal so as to arrive at a conclusion that there was a discrimination in awarding the punishment and for that reason, the Tribunal could not be in a position to express any opinion.

With regard to the punishment, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the consciousness of the Court, there is no scope for interference. Being Conductors, the petitioners have to perform their duties with utmost integrity and honesty. When a conductor fails to maintain the standards of integrity and honesty, the Corporation will sustain loss. Thousands of rupees have been misappropriated by the petitioners and the trust deposed on them is shaken by their acts. Misappropriation of amounts or corruption cases have to be dealt with iron hand. There cannot be any other punishment in such cases except the dismissal.

For the aforesaid reasons, this Court does not find any infirmities in the impugned awards passed by the Tribunal and therefore, there are no grounds to interfere with the same. Accordingly, the writ petitions are dismissed. No order as to costs.

JUSTICE K.C.BHANU

Date: 19-08-2005.

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